

***United States Court of Appeals
for the Second Circuit***



**PETITIONER'S
BRIEF**

602

75-4101

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

ROBERTE NOEL,

Petitioner,

- v -

IMMIGRATION AND NATURALIZATION
SERVICE,

Respondent.

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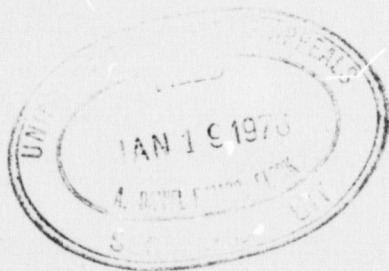
Docket No. 75-4101

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PETITIONER'S BRIEF

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JANUARY, 1976



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PETITIONER' S BRIEF

STATEMENT OF THE ISSUE

Whether the Board of Immigration Appeals properly applied to the facts of the case at bar the standards governing the withholding of deportation pursuant to Sec. 243(h), as amended, of the Immigration and Nationality Act of 1952, 79 Stat. 918.

STATEMENT OF THE CASE

Petitioner Roberte Noel ("Noel") is an alien and citizen of Haiti. In 1969 she was admitted to the

United States on a nonimmigrant visitor's visa issued by the American Consul at Georgetown, British Guyana. Noel overstayed the period of her admission, as extended, and on March 27, 1973, an order to Show Cause issued (R. 27a) charging her with overstay pursuant to Sec. 241(a)(2). At her hearing before an immigration judge she admitted that she was deportable (R. 1a) but made an application for withholding of deportation pursuant to Sec. 243(h), as amended, of the Immigration and Nationality Act of 1952, 7 Stat. 918. The immigration judge heard Noel's testimony concerning her fear of being persecuted because she belonged to the family of former President Magloire of Haiti.

The immigration judge, in a decision dated January 10, 1975 (R. 4a) rejected the 243(h) application, and ordered respondent's deportation in the event she failed to depart voluntarily. On administrative appeal, the Board of Immigration Appeal affirmed (R. 1a). This petition for review followed.

ARGUMENT

POINT I. Present conditions in Haiti.

The National Geographic of January 1, 1976 (Vol. 149, No.1) has this to say about present conditions in Haiti; (The National Georgraphic is one of America's most respected publications, with a circulation reaching 7,000,000 copies).

"We were alone," my informant said in a whisper. "Cut off from the rest of the world in the middle of the 20th century. Never knowing when the police would strike. That was life under Papa Doc."

I was night and we sat out of doors, apart from the others, apart from the music and the lights. I could not see the expression of his black face, but I knew it was watchful. I had learned that it was still risky to speak honestly about Francois Duvalier, even though he had been dead for three years.

A soft-spoken physician who had studied in the United States, Duvalier had come to power by legitimately winning an election as President by an overwhelming majority in 1957. His aims: to shift power from a mulatto minority to a black majority and to improve self-sufficiency. But in consolidating his power, he is alleged to have resorted to abduction, imprisonment, torture, even murder.

Duvalier's brutal tontons macoute — "bogeymen"—in their blue serge suits, open-necked shirts, dark glasses, and side arms terrorized Duvalier supporters as well as opponents, since his policy was to trust no one.

During most of the Duvalier years, the late 1950's through the 1960's, Haiti had virtually no economic growth. One source of help, U.S. aid, was reduced for several years in protest against Duvalier's policies.

My nighttime confidant had once been a friend and supporter of the President-for-life, and he told me these things sadly.

"Worst of all," he concluded, "the regime made fear a pervading part of Haitian life."

That stranglehold of fear during Papa Doc's day was powerfully strengthened by the President's uncanny resemblance—perhaps cultivated—to popular renderings of Baron Samedi, the awesome keeper of the tombs in the folk religion, voodoo. (Emphasis supplied).

This is not quite what the immigration judge found, not on the record but on the basis of conjecture. Obviously the conditions of life in Haiti did not develop overnight, they are the result of years of oppression by a ruthless dictatorship. In September, 1974 Noel testified before the immigration judge (R. 15a) that she feared for her life. Now, in January, 1976, the National Geographic states: at 77

"Worst of all," he concluded, "the regime made fear a pervading part of Haitian life".

Noel did not play with words when she testified. In her simple, forthright manner she testified that she feared being subject to the same punishment and treatment as that meted out to her father: imprisonment without charges being preferred, without a trial and without conviction, police surveillance without any reason whatsoever.

POINT II. The "findings" of the immigration judge are not supported by substantial evidence.

Section 106(a)(4) of the Act provides, in pertinent part:

"the Attorney General's findings of fact if supported by reasonable, substantial and probative evidence on the record considered as a whole, shall be conclusive".

Here the Attorney General has delegated his functions to make findings of fact to the immigration judge who, in turn, has not made the effort to comply with the statutory standard. Apparently, in this deportation proceeding where the burden of proof is upon the Government, there has been no proof of the actual conditions of life in Haiti, as described by the National Geographic.

The order of the Board of Immigration Appeals which affirmed the order of the immigration judge, should be vacated and the cause remanded to the immigration judge for a hearing as to the actual conditions of life in Haiti, cf. I.N.S. v. Stanisic, 395 U.S. 62, at 79, 80. Sovich v. Esperdy, 319 F.2d 21 (2nd Circ., 1963), Kovac v. I.N.S., 407 F.2d 102 (9th Circ., 1969). In such a proceeding, Noel should be permitted to introduce into evidence the National Geographic account of life in Haiti and, if need be, to call as eye witnesses the writers of that article.

POINT III. The Imprisonment of Noel's natural father and of her half brother is due to political persecution because no charges have been preferred against either. Noel's fear of such persecution is well founded.

The immigration judge, in his decision (R.6a-7a) has "taken cognizance of the events in Haiti over the past seventeen years" without describing what those events, were. The National Geographic does give such a description.

The immigration judge then went on to show his low regard for human values when he wrote:

"even the respondent's (Noel's) natural father and his on do not appear to have been subjected to any mistreatment other than perhaps a brief period of detention from which they were immediately released, although the respondent (Noel) claims that they are required to report regularly to the police." R. 7a.

In short, the immigration judge inferred that if Noel were deported to Haiti, a "brief period of detention" would do her good, or that reporting regularly to the police would also do her good.

People in the United States are not being held for "brief periods of detention" without a warrant or commitment, nor are people being required "to report regularly to the police" unless they are on probation or on parole. Thus the immigration judge has applied his own notions of "due process of law" in Haiti without giving any reasons therefor.

POINT IV. There is no evidentiary value in the State Department letter of April 10, 1974.

Despite the decisions in Kasravi v. I.N.S., 400 F.2d 675 (9th Circ., 1968) and Khalil v. I.N.S., 452 F.2d 1276 (9th Circ., 1972), the I.N.S. has relied on the State Department's answer (R. 34a) to its inquiry in

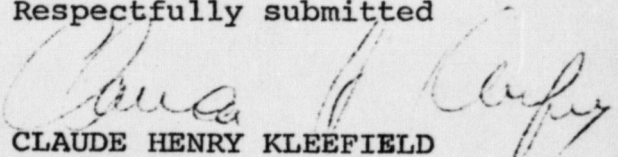
denying Noel her 243(h) claim, R. 35a and in resisting her 243(h) application, R. 18a which she made to the Immigration Judge.

While it is true that neither the immigration judge nor the Board of Immigration Appeals expressly, relied on such "evidence", the State Department's letter is still a part of the record. The letter should be stricken, Kasravi, Khalil, supra.

CONCLUSION

For the foregoing reasons, the Order of the Board of Immigration Appeals, affirming the decision of the immigration judge on Noel's 243(h) application should be vacated and the cause remanded for further proceedings before the immigration judge.

Respectfully submitted


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January, 1976.

STATUTES CITED AND INVOLVED

Immigration and Nationality Act of 1952, as amended

Section 106(a):

Determination upon administrative record

"*** (4) except as provided in clause (B) of paragraph (5) of this subsection, the petition shall be determined solely upon the administrative record upon which the deportation order is based and the Attorney General's findings of fact, if supported by reasonable, substantial, and probative evidence on the record considered as a whole, shall be conclusive."

Section 241 - Deportable aliens - General classes

- (a) Any alien in the United States (including an alien crewmen) shall, upon the order of the Attorney General, be deported who *****
- (2) entered the United States without inspection or at any time or place other than as designated by the Attorney General or is in the United States in violation of this chapter or in violation of any other law of the United States.

Section 243(h) - Withholding of deportation

- (h) The Attorney General is authorized to withhold deportation of any alien within the United States to any country in which in his opinion the alien would be subject to persecution on account of race, religion, or political opinion and for such period of time as he deems to be necessary for such reason.

James S. Allen (R.F.)
1/19/76
SECURITY